

2005 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB280)

Received: **07/13/2005**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Curtis Gielow (608) 266-0486**

By/Representing: **Julie**

This file may be shown to any legislator: **NO**

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Gielow@legis.state.wi.us**

Carbon copy (CC:) to: **robin.ryan@legis.state.wi.us**
cathlene.hanaman@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Expungement of misdemeanors

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mdsida 08/29/2005	kfollett 09/08/2005		_____			S&L
/1			rschluet 09/08/2005	_____	mbarman 09/08/2005	mbarman 09/08/2005	

FE Sent For:

<END>

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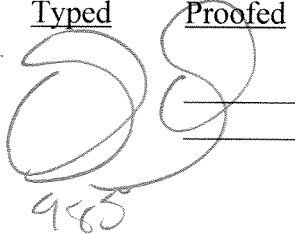
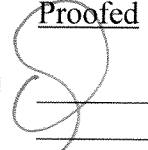
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/?	mdsida	1/16/05 9/8	 9/8/05				

FE Sent For:

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S.b to AB280

- 1) Expungement doesn't take effect until later of
 - completion of sentence
 - 2yrs from conviction

← applies to all offenders, regardless of age

- 2) Only one expungement under this § per life
 multiple counts > ok
 same complaint > ok

Multiple complaints - not ok

(what if possible, 2/10??)
 need

- 3) CCAP records → direct clerk of ct / DOJ
 to clear records from CCAP
 w/in 45 days

- 4) ~~Expungement~~ Expungement means no conviction for
 purposes of employment, etc.

If someone gets 2+ yrs 1/1 (consecutive),

1)

2) Regmts

3) How it happens

a) for me (2mxc)

b) for later expungements

Dsida, Michael

From: Sawyer, Julie
Sent: Monday, August 29, 2005 10:03 AM
To: Dsida, Michael
Subject: RE: AB280 Expungement of Misdemeanor substitute amendment

If you get a moment, please call me at 6-0486. Thanks, Julie

From: Dsida, Michael
Sent: Wednesday, August 24, 2005 5:03 PM
To: Sawyer, Julie
Subject: RE: AB280 Expungement of Misdemeanor substitute amendment

We didn't talk about other databases, such as the TIME system. (I think that is what DOJ and law enforcement officers in the field use, but I need to double check. I also can check to see if there are other databases -- perhaps for firearms restrictions record checks.) How, if at all, should the sub treat them?

From: Sawyer, Julie
Sent: Wednesday, August 24, 2005 4:51 PM
To: Dsida, Michael
Subject: RE: AB280 Expungement of Misdemeanor substitute amendment

Thanks for the response.

2nd issue: take the notification requirements out.

3rd issue: Thanks for reminding me. Please leave that section in.

Thanks again.

From: Dsida, Michael
Sent: Wednesday, August 24, 2005 4:49 PM
To: Sawyer, Julie
Subject: RE: AB280 Expungement of Misdemeanor substitute amendment

My responses are in bold below.

From: Sawyer, Julie
Sent: Monday, August 22, 2005 5:13 PM
To: Dsida, Michael
Subject: RE: AB280 Expungement of Misdemeanor substitute amendment

Thanks for your position on the first subject. That sounds good.

Second: Can you think of any reason why s. 973.015 (4) (page 3, line 9) should remain in the substitute? Would the issue of notifying DOJ and DOC be taken care of by the fact that the CCAP entry must be cleared/expunged within 45 days of the order? **I can't think of any reason why the notification requirements should remain. This statute predates CCAP, which might explain why that provision is part of current law.**

Third (new topic): I looked at my notes and I don't remember what we said about s. 973.015 (2) that allows for the court to order expungement to go into effect when the person successfully completes his/her sentence and the appropriate certificate of discharge is sent to the court of record. Will that section remain in effect -- the court can/may order a specific sentence w/expungement and the person may get the record expunged if he/she completes the sentence without the need to go back in front of the court? **Based on our discussion, I was planning on keeping that as an option for the court. But if you want to eliminate it, just let me know.**

From: Dsida, Michael
Sent: Monday, August 22, 2005 3:41 PM
To: Sawyer, Julie

Subject: RE: AB280 Expungement of Misdemeanor substitute amendment

I don't know how expungements are handled under s. 973.015, but I suspect that they don't occur very often, so what happens under current law may not be all that relevant. Perhaps it makes the most sense to require the clerks to delete the records? (That may require the Director of State Courts to make some changes to the CCAP system to allow that to happen, but I don't think the bill needs to get that specific.)

If information is to be expunged from CCAP (regardless of who does it), I'm not sure that it makes sense to include AB-280's proposed s. 973.015 (4) (page 3, line 9) in your sub. What do you think?

From: Sawyer, Julie
Sent: Thursday, August 18, 2005 11:00 AM
To: Dsida, Michael
Subject: RE: AB280 Expungement of Misdemeanor substitute amendment

Thank you.

I was told that the Clerk's in the courtrooms aren't responsible for deleting items from CCAP -- but I'm not sure where to "verify" that information and/or to find out who is responsible for deleting items...

Shall I continue to look into that?

Julie

soon
2005 ASSEMBLY BILL 280

April 4, 2005 - Introduced by Representatives GIELOW, KESSLER, GRIGSBY, FIELDS, TOLES, BENEDICT, TURNER, POCAN, COLON, NISCHKE, A. WILLIAMS and BERCEAU, cosponsored by Senators TAYLOR and COGGS. Referred to Committee on Corrections and the Courts.

Regen

- 1 **AN ACT to renumber and amend 973.015 (1) and 973.015 (2); to amend 301.45**
2 **(7) (e) 2. and 301.45 (7) (e) 3.; to repeal and recreate 973.015 (title); and to**
3 **create 973.015 (3) of the statutes; relating to: expungement of misdemeanors.**

Analysis by the Legislative Reference Bureau

Under current law, if a person commits a misdemeanor (which, in general, is a crime for which a person may be imprisoned for no more than one year) before he or she reaches the age of 21, a court may order that the court's record regarding the offense be expunged upon the offender's successful completion of his or her sentence. (A person successfully completes a sentence if he or she is not convicted of a subsequent offense and, if the person is placed on probation, he or she complies with any conditions of probation.) The court may enter such an order only at the time of sentencing and only if it finds that expunging the record will benefit the person and will not harm society.

substitute amendment
This bill makes this expungement option available for all offenders, regardless of their age at the time of the offense. In addition, under the bill, a court may enter an order authorizing expungement at any time during or after the sentence.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

also permits

ASSEMBLY BILL 280

1 SECTION 1. 301.45 (7) (e) 2. of the statutes is amended to read:

2 301.45 (7) (e) 2. The department issues a certificate of discharge under s.

3 (3) 973.015 (2) (2m) ~~(e)~~.

4 SECTION 2. 301.45 (7) (e) 3. of the statutes is amended to read:

5 301.45 (7) (e) 3. The department receives a certificate of discharge issued or

6 ~~expungement order~~ under s. 973.015 (2) by the detaining authority (4).

7 SECTION 3. 973.015 (title) of the statutes is repealed and recreated to read:

8 **973.015 (title) Expungement of misdemeanors.**

9 SECTION 4. 973.015 (1) of the statutes, as affected by 2003 Wisconsin Act 33,

10 is renumbered 973.015 (2m), and 973.015 (2m) (a), as renumbered, is amended to
11 read:

12 973.015 (2m) (a) Subject to par. (b), when if a person is under the age of 21 at
13 the time of the commission convicted of an offense for which the person has been
14 found guilty in a court for violation of a law for which the maximum penalty is
15 imprisonment for one year or less in the county jail, the court may order at the time
16 of sentencing or at any other time that the record be expunged upon successful
17 completion of the sentence if the court determines the person will benefit and society
18 will not be harmed by this disposition.

19 (b) (5) This subsection section does not apply to information maintained by the
20 department of transportation regarding a conviction that is required to be included
21 in a record kept under s. 343.23 (2) (a).

22 SECTION 5. 973.015 (2) of the statutes is renumbered 973.015 (1m) and

23 amended to read:

24 973.015 (1m) A person has successfully completed the sentence if the in this
25 section, "successfully completes the sentence" means that a person has not been

ASSEMBLY BILL 280

1 convicted of a ~~subsequent offense and, if~~ on probation, the probation has not been
2 revoked and the probationer has satisfied the conditions of probation. Upon
3 successful completion of the person

4 **(2m)** (c) If a person who is the subject of an order under par. (a) or (b)
5 successfully completes the sentence, the detaining or probationary authority shall
6 issue a certificate of discharge which shall be forwarded to the court of record and
7 which shall have the effect of expunging the record. If the person has been
8 imprisoned, the detaining authority

9 **(4)** Upon receiving a certificate of discharge for a person who is subject to an
10 order under sub. (2m) or upon the entry of an expungement order under sub. (3), the
11 clerk of circuit court shall notify the department of justice of the expungement. The
12 clerk of circuit court shall also forward a copy of the any certificate of discharge not
13 issued by the department of corrections and any expungement order to the
14 department of corrections.

15 **SECTION 6.** 973.015 (3) of the statutes is created to read:

16 973.015 (3) If a person is convicted of an offense for which the maximum
17 penalty is imprisonment for one year or less in the county jail and the person
18 successfully completes the sentence, the court may order at any time thereafter that
19 the record be expunged if it determines the person will benefit and society will not
20 be harmed by this disposition. The detaining or probationary authority shall notify
21 the court, upon request, whether a person successfully completed his or her sentence.

22 **SECTION 7. Effective date.**

23 (1) This act takes effect on September 30, 2005, or the day after publication,
24 whichever is later.

25

(END)

BILL

do all of the following as conditions of extended supervision: 1) participate in an alcohol or other drug abuse assessment and, if appropriate, in a treatment program recommended or provided by the Department of Corrections (DOC); 2) work or attend school or other education or occupational training programs; and 3) refrain from illegally using or possessing a controlled substance. If the court places the defendant on probation for the crime, the court must require the defendant to do the same things as conditions of probation.

When the defendant completes his or her sentence, DOC must inform the court whether the defendant has completed it successfully. (Under the bill, a person successfully completes his or her sentence if he or she is not convicted of a subsequent offense and he or she complies with the requirements of extended supervision or probation.) The court must then conduct a hearing. If the court determines that the defendant has successfully completed his or her sentence and that the defendant will benefit and society will not be harmed by converting the defendant's felony conviction into a misdemeanor conviction, the court must modify the judgment of conviction to specify that the conviction for the offense shall generally be considered to be a conviction for a misdemeanor retroactive to the date on which the judgment was entered.

If the court modifies the judgment of conviction in this way, the offender's civil rights are restored. The modification also renders inapplicable most other provisions of current law that limit the rights of a felon or subject a felon to certain adverse consequences (beyond the criminal sentence) for committing the felony. As a result, a person whose judgment of conviction is modified under the bill is not subject to provisions that, permanently or for specific periods of time, do the following: 1) require drug testing for a felon who is participating in the Wisconsin Works program and for a felon who is participating in, or who is a household member of a person participating in, the food stamp program; 2) generally prevent a felon from obtaining a teaching license; 3) prevent a person who uses a motor vehicle to commit a felony from operating a commercial motor vehicle; 4) prevent a felon from obtaining authorization to operate a school bus; 5) prevent a felon from obtaining a license or permit related to alcohol beverages; 6) allow the state, with respect to certain occupations or professions, to deny or revoke an occupational or professional license, permit, or other credential or take disciplinary action if an applicant or credential holder is convicted of a felony; 7) prevent a felon from obtaining a license related to the operation of a racetrack or from serving as a lottery retailer; and 8) prevent a felon from being admitted to certain state facilities for veterans.

Ten years after his or her judgment of conviction is modified, the person may petition the court to order that the record of the conviction be expunged. The court may not grant the petition if, at any time during the intervening years and in any place in the United States, the person: 1) has violated an ordinance relating to a controlled substance or to operating a motor vehicle while intoxicated; or 2) has committed a crime. Otherwise, if it finds that society will not be harmed, the court must grant the petition. If the court enters an expungement order, the person can no longer be affected by any prohibition, disqualification, disability, increased penalty, or other adverse or unfavorable treatment that results from a felony or

upon the

of a

's conviction,
he or she

BILL

this substitute amendment
misdeemeanor conviction, including any adverse consequences that might result from a court's consideration of the expunged offense in any subsequent case. *the* ~~The bill similarly restricts the use of a conviction expunged by a special disposition authorized under current law. In addition, under the bill,~~ *Moreover,* neither the existence nor the contents of court records relating to ~~an offense expunged through a youthful offender disposition or through a special disposition authorized under current law~~ may be disclosed to anyone other than the person or his or her attorney. *no P*

~~Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.~~

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 8.21 of the statutes is amended to read:

2 **8.21 Declaration of candidacy.** Each candidate, except a candidate for
3 presidential elector under s. 8.20 (2) (d), shall file a declaration of candidacy, no later
4 than the latest time provided for filing nomination papers under s. 8.10 (2) (a), 8.15
5 (1), 8.20 (8) (a) or 8.50 (3) (a), or the time provided under s. 8.16 (2) or 8.35 (2) (c).
6 A candidate shall file the declaration with the officer or agency with which
7 nomination papers are filed for the office which the candidate seeks, or if nomination
8 papers are not required, with the clerk or board of election commissioners of the
9 jurisdiction in which the candidate seeks office. The declaration shall be sworn to
10 before any officer authorized to administer oaths. The declaration shall contain the
11 name of the candidate in the form specified under s. 8.10 (2) (b) for candidates for
12 nonpartisan office or s. 8.15 (5) (a) or 8.20 (2) (a) for candidates for partisan office,
13 and shall state that the signer is a candidate for a named office, that he or she meets
14 or will at the time he or she assumes office meet applicable age, citizenship, residency
15 or voting qualification requirements, if any, prescribed by the constitutions and laws

BILL

1 successful completion of the sentence the detaining or probationary authority shall
2 issue a certificate of discharge which shall be forwarded to the court of record and
3 which shall have the effect of expunging the record. Upon receiving the certificate
4 of discharge, the clerk of the court shall notify the department of justice of the
5 expungement. If the person has been imprisoned, the detaining authority shall also
6 forward a copy of the certificate of discharge to the department.

7 **SECTION 92.** 973.015^{and (5)} (3) and (4) of the statutes are created to read:

8 ^{person's} (4) 973.015 (3) If a record of a conviction is expunged under ^{sub. (2)} sub. (2), the ^{petitioner} person
9 shall not be subject to any prohibition, disqualification, disability, increased penalty,
10 or other adverse or unfavorable treatment that would otherwise result from the
11 person having been convicted of that offense. this section

12 ^{subd. 2.} (4) (a) Except as provided in ^{par. (b)} par. (b) and sub. (2), if a record of a conviction is
13 expunged under ^{sub. (2)} sub. (2), neither the existence nor the contents of the court's records
14 relating to the misdemeanor may be disclosed to any person.

15 ^{2.} (b) Notwithstanding SCR 72.06 (3), the existence and content of a court record
16 that is expunged under sub. (2) may be disclosed to the person who was convicted or,
17 if authorized by the person who was convicted, to an attorney representing the
18 person who was convicted.

19 **SECTION 93.** 973.016 of the statutes is created to read:

20 **973.016 Youthful offender felony disposition and discharge. (1)**

21 ELIGIBILITY. At the request of a defendant charged in a single case with one or more
22 felonies and with the agreement of the district attorney, the court may order that the
23 defendant be granted a youthful offender disposition if the requirements of subs. (2)
24 and (3) are met and if all of the following apply:

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0166/lins
MGD:.....

1 **analysis INSERT A**

no If the person successfully completes the sentence in such a case, the Department of Corrections or the county jail or house of correction must issue a certificate stating that the person successfully completed the sentence. The expungement takes effect immediately upon the issuance of that certificate.

2 **analysis INSERT B**

no The substitute amendment, however, specifies that expungement may not occur within the first two years after the person's misdemeanor conviction and that, in general, a person is only eligible for expungement once in his or her lifetime.

3 **INSERT 2/6**

4 or, if s. 973.015 (3) does not apply but the requirements of s. 973.015 (2) are met,
5 an expungement order issued under s. 973.015 (1)

6 **INSERT 2/18**

7 , the court may order, at sentencing, during the sentence, or after the
8 completion of the sentence, that the record be expunged if the requirements of sub.
9 (2) are met

10 **INSERT 2/21**

11 **SECTION 1.** 973.015 (1) (b) of the statutes is amended to read:

12 973.015 (1) (b) ~~The court shall order at the time of sentencing that the record~~
13 ~~be expunged upon successful completion of the sentence if~~ If the offense was a
14 violation of s. 942.08 (2) (b), (c), or (d); and the person was under the age of 18 when
15 he or she committed it, the court shall order, at the time of sentencing, that the record
16 be expunged if the requirements of sub. (2) are met.

History: 1975 c. 39; 1975 c. 189 s. 105; 1975 c. 199; 1983 a. 519; 1991 a. 189; 2003 a. 33, 50, 320.

17 **INSERT 2/24**

18 no person's conviction may be expunged under this section if all of the following
19 apply:

20 (a) The

21 **INSERT 2/25**

1 no # → :

2 # (b) The

3 **INSERT 3/1**

4 no # crime committed after the misdemeanor conviction.

5 # (c) If

6 **INSERT 3/4**

7 # (3) If the requirements of sub. (2) are met and the order under sub. (1) was
8 entered before the person completed the sentence or less than ²two years after the
9 person's misdemeanor conviction²

10 **INSERT 3/7**

11 imprisoned, the detaining authority shall also forward a copy of the certificate
12 of discharge to the department.

13 **INSERT 3/10**

14 but the requirements of sub. (2) are met,

15 **INSERT 3/15A**

16 **SECTION 2.** 973.015 (2) (d) of the statutes is created to read:

17 973.015 (2) (d) At least 2 years have lapsed since the person's misdemeanor
18 conviction.

19 **INSERT 3/15C**

20 **SECTION 3.** 973.015 (6) (a) of the statutes is created to read:

21 973.015 (6) (a) This section ~~does not~~ apply to a person who has already been
22 the subject of ^{an} order entered under this section ~~unless~~ the order related to an offense
23 that could have been joined under s. 971.12 (1) with the present offense.

24 **INSERT X (goes into insert 3/15B at line 18)**

4 2. The record of the offense ^{to} which the order related
has been ~~expunged~~ ^{expunged or} the person remains eligible for expungement
regarding that offense under sub. (2).

1 (b) Within 45 days after a conviction is expunged under this section, the clerk
2 of the court of record shall ensure that all records and data relating to the
3 misdemeanor are removed from the automated information systems under s. 758.19
4 (4).